CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Applicants request that this be considered a petition therefore. Please charge the required fee to Deposit Account No. 14-1263.

ADDITIONAL FEES

Please charge any further insufficiency of fees, or credit any excess to Deposit Account No. 14-1263.

REMARKS

Claims 1-4, 6 and 8-20 are pending in the application. The claims have been rejected for allegedly being obvious over Murayama in view of Feret, and further in view of Haffner.

No claims have been amended.

Applicants gratefully acknowledge withdrawal of the finality of the office action.

Preliminary Remarks

Applicants respectfully suggest that the instant rejection over Murayama and Feret does not follow the Patent Office's guidelines for combining references. As discussed below, it is suggested that the motivation behind combining the references is not provided in the references or the art in general. Instead, it appears that Examiner selectively chose features in the references to approximate the claimed subject matter with hindsight. This is an improper mode of analysis and is insufficient to make out a *prima facie* case of obviousness. MPEP § 2143.01, *citing In re Rouffet,* 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, *however without a motivation to combine, a rejection based on a prima facie case of obvious was held improper.*)(Emphasis added).

The guidelines further appreciate that this improper analysis arises when the technology field of the invention is based on relatively uncomplicated technical concepts. MPEP § 2143.01, citing *In re Kotzab,* 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000) (Court

reversed obviousness rejection involving technologically simple concept because there was no finding as to the principle or specific understanding within the knowledge of a skilled artisan that would have motivated the skilled artisan to make the claimed invention); The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir.1999).

In sum, Examiner has combined claim limitations from the references although there was no express or implied motivation to do so.

Based on the aforementioned insights and perspectives on the instant rejection, together with the ensuing remarks, it is respectfully suggested that the rejections be withdrawn, and the claims deemed allowable.

Combination of Murayama and Feret

1. Motivation to Combine References

In keeping with the principles set out above, it is apparent that Muryama and Feret do not provide sufficient motivation to combine their disclosures. This is the case even though the technology is a conceptually simple one.

For example, nowhere does Muryama provide a suggestion to emboss a film that is attached to a nonwoven backing. Muryama does not even mention the desirability of adding a design, or altering the texture of any aspect of his disclosed film. (It should be noted that Murayama's use of the word film includes the combination of nonwoven and polymer film layer. See col. 2, lines 7-11; and claim 1.)

Neither does Muryama disclose the desirablity of, or the intent to, provide a bandage having a reduced friction coefficient to avoid unintentional removal due to rubbing against the bandage's surface. See Feret, Abstract. Thus, Murayama does not provide any motivation to combine the embossing of Feret.

Similarly, Feret does not even contemplate, let alone exemplify combining the disclosed embossed film with a nonwoven backing. Feret's disclosure does not even refer to nonwovens or wovens, textiles or fabrics, or laminates, layers and layered. Feret's disclosure is narrow in scope and motivation. He wants a film backing that will resists removal that may result from the friction generated during incidental contact, e.g., rubbing.

Therefore, contrary to Examiner's conclusion in the instant rejection, there is no motivation to combine the teachings of Murayama and Feret. Respectfully, it appears that Examiner has substituted the apparent ease with which her proposed modification of Murayama may be physically achieved, in place of the proper motivation in the references to actually make the modification. MPEP § 2143.01, citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) ("The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.") (Emphasis in original).

See also, MPEP § 2143.01 citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) (The level of skill in the art cannot be relied upon to provide the suggestion to combine references.).

Respectfully, the case law and the PTO guidelines indicate that it is more likely than not that persons of ordinary skill in the art would not make Examiner's proposed modification based on the references. Accordingly, the rejections under § 103(a) should be withdrawn.

2. The Claimed Subject Matter is Distinguishable From the References

Examiner cites col. 2, lines 60+ for allegedly disclosing the desirability of Murayama's polymer film being coextruded with a tie layer. Respectfully, this is not accurate.

The disclosure refers to extrusion molding, not coextrusion. In extrusion molding, melted or softened plastic is forced through a die. See attachment, *How Plastics are Made*. There is no express or implied reference to coextruding multiple layers.

Further, the cited text explicitly states that the polymer laminating film can be multilayered by laminating films of different materials. Thus, Murayama describes laminating

preformed films that may be made of different materials. If for argumentation only, we assume that one of these additional laminating films were equivalent to a coextruded tie layer, Murayama does not describe its composition.

In contrast, claim 1 requires that the tie layer be *pure thermoplastic polyolefins*. This limitation cannot reasonably be viewed as obvious over a disclosure of "different materials."

Combining Murayama with Feret does not strengthen the rejection, because Feret does not disclose a multilayered film at all.

Therefore, assuming for argumentation only, that the references were properly combined, it is respectfully requested that the rejections be withdrawn because the references do not teach the limitation of a coextruded tie layer of pure thermoplastic polyolefins

3. The Combined References do not Inherently Approximate the Claimed Subject Matter.

Should Examiner rely on an inherency theory to support the rejections, it is pointed out that is more likely than not that the structural differences described above are sufficient to render the claimed subject matter functionally distinct. This is shown by comparing the tensile strength at breakpoint (i.e., 100% elongation). See Murayama, Table I, *Tensile strength at break*; and Specification, Table 2, page 12, *Force for 100% elongation*.

Murayama's articles show an average value of 695.8 g/cm.
Applicants' articles show an average value of 23.3 N/inch.

Applicants' measurements were converted to g/cm to permit direct comparison as follows:

1 N of force = 102 g of force =0.102 kg of force
1 in = 2.54 cm
Thus, **1 N/in** = 102 g ÷ 2.54 cm = **40.8 g/cm**

Using this conversion factor, one can calculate that at break point the Applicants' article averages 949.62 g/cm. In contrast, Murayama's articles show an average value of 695.8 g/cm.

Each of the averages are calculated from the four embodiments disclosed in the disclosures of Murayama and Applicants.

When compared with Murayama's film, the claimed subject matter withstood an average of 36.5% more force. Thus, there is a compositional and structural difference between the two laminates resulting in a significant difference in properties.

Therefore, Murayama taken individually or in combination with Feret, do not disclose an article with the properties of the claimed subject matter.

In brief:

- These data support Applicants' conclusion that it is more likely than not that the differences in composition and structure, e.g., the coextruded layers with the tie layer of pure thermoplastic olefins, provide a functional difference and cannot be viewed as an equivalent of Murayama's film.

- These data would render improper a rejection based on an inherency theory.

- These data indicate that the combined references do not provide an enabling disclosure that would allow persons of ordinary skill in the art to make the claimed laminate.

In sum, the combined teachings of Murayama and Feret, even if combined, do not support a *prima facie* case of obviousness. These references

4. The Rejections Further in View of Haffner are Negated

In view of the fact that the undersigned believes in good faith that the foregoing remarks overcome the rejections based on Murayama/Feret, the rejections further in view of Haffner are also overcome.

Respectfully, these rejections should be withdrawn.

In addition, the finality of the rejection should be withdrawn. Should it be found that the Examiner's amendment, for some reason, cannot be withdrawn, it is requested that the finality be withdrawn. The new reference was applied based on Examiner's amendment, and therefore Applicants should not be penalized.

Respectfully Submitted,

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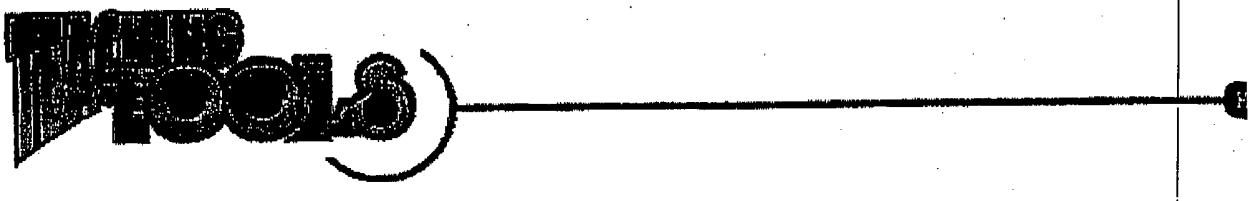
CERTIFICATE OF FACSIMILE TRANSMISSION

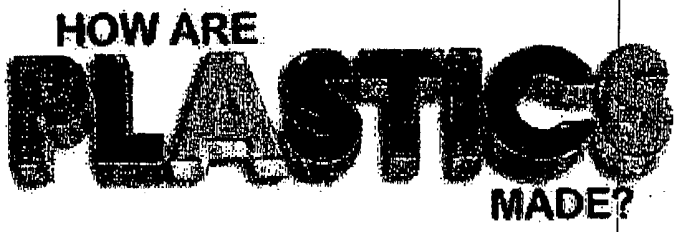
I hereby certify that the foregoing Amendment under 37 CFR § 1.111 (9 pages + 1 page attachment) is being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: **26 July 2004**

By: Agata Glinska
Agata Glinska



HOW ARE PLASTICS MADE?



Plastics Processing Methods

Extrusion Molding -- the main process used to form plastics. A plastic compound is forced continuously through a forming die m desired shape (like squeezing toothpaste from a tube, it produce usually narrow, continuous product). The formed plastic cools un air or in a water bath and hardens on a moving belt. Rods, tubes Slinkys®, and sheet and thin film (such as food wraps) are extru coiled or cut to desired lengths.

Plastic fibers also are made by an extrusion process. Liquid resi squeezed through thousands of tiny holes called spinnerets to pr fine threads from which plastic fabrics are woven.

Injection Molding -- is the second most widely used process to plastics. The plastic compound, heated to a semi-fluid state, is s into a mold under great pressure and hardens quickly. The mold opens and the part is released. This process can be repeated as times as necessary and is particularly suited to mass production Injection molding is used for a wide variety of plastic products, fr cups and toys to large objects weighing 30 pounds or more.

Blow Molding -- pressure is used to form hollow objects, such a soda pop bottle or two-gallon milk bottle, in a direct or indirect m the direct blow-molding method, a partially shaped, heated plasti inserted into a mold. Air is blown into the form, forcing it to expar shape of the mold. In the indirect method, a plastic sheet or spec is heated then clamped between a die and a cover. Air is forced the plastic and the cover and presses the material into the shape die.